IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7602 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY.EXECUTIVEENGINEER - Petitioner(s)

Versus

LAXMIBEN DIVANJI THAKOR, . & 2 - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner(s) : 1,
MR AM RAVAL for Respondent(s) : 1 - 2.
MR SHASHIKANT S GADE for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 15/12/2005

ORAL JUDGMENT

1.The petitioner namely Deputy Executive Engineer, Road and Building, Sub Division, Visanagar has filed this petition under Articles 226 and 227 of the Constitution

of India, praying for quashing and setting aside the award passed by the learned Presiding Officer, Labour Court, Kalol(N.G.) dated 2.2.1998, in Reference (LCK) No.19 of 1985 wherein the learned Labour Judge has directed the petitioner to reinstate the respondent Nos.1 and 2 with full back wages. He has further directed the petitioner to give 25% of the back wages from 25.05.1982 to 16.07.1991 to Shri Fulaji Ravaji Thakore who is the legal heir of late Shri Ravaji Talaji Thakore as he has expired during the pendency of the reference before the Labour Court. During the pendency of this petition before this Court, Shri Divanji Ravaji Thakore has also expired on 31.10.2000 and his legal heirs are brought on record.

2. The petition was admitted by this Court on 28.12.1999 and interim stay was granted against the operation of the award subject to compliance with Section 17(B).

3. It is the case of the petitioner that the respondent workmen were on daily wages and they used to work as Security Guards on daily wages and, therefore, as and when there was a need of services of the respondent workman, the petitioner used to call them and they have not been completed 240 days in their services. It is

further submitted that the provisions of Section 25(F) of the Industrial Dispute Act are not applicable to the present case. It is further stated that the respondent workmen were on duty on 25.5.1982 and considering the fact that during their service, case of theft was taken place and therefore they were arrested by the Police and they were in police custody for more than 25 hours and, therefore, they were not called on their duties. It is further contended that the respondent workmen are not entitled for any back wages and re-instatement. It is further submitted that after their acquittal by the competent Court by an order dated 26.04.1983, the respondent workmen have applied to the petitioner authority to re-instate them but as they were involved in theft, in the interest of public at large, they were not placed on the same post. However, with written consent dated 6.12.1983 of the respondent workmen i.e. Divanji Ravaji Thakore, he was placed at Dabhoda Sarvodaya Ashram as security Guard on daily wages from 7.12.1983. On the said post, the respondent workman i.e. Divanji Ravaji Thakore had worked for one week only and thereafter he has stopped to come on work and, therefore, the Deputy Executive Engineer, Sub Division, Visanagar by his notice dated 2.1.1984 instructed the respondent workman to remain present on duty regularly.

But the respondent workman did not come and ignored the written notice of the authority. Other two respondents have also not worked. It is further submitted that, the learned Presiding Officer, Labour Court, Kalol has erroneously directed the petitioner to re-instate the respondent Nos.1 and 2 workmen with full back wages and to pay 25% of back wages to the legal heirs of the respondent No.3.

4. Mr.L.B. Dabhi, learned A.G.P. appearing for the petitioner has submitted that the respondent workman, pursuant to the criminal case filed against them for commission of theft, were terminated and thereafter, on their acquittal, a reference was filed before the Labour Court. He has further submitted that the Labour Court should not have entertained the belated reference. In support of his submission, he relied on the decision of **The Nedungadi Bank Ltd. V/s. K.P. Madhavankutty and Others** reported in JT2000(1)SC 388, wherein the Hon'ble Supreme Court has held that law does not prescribe any time limit for the appropriate government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and

in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised the powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. In fact it could be said that there was no dispute pending at the time when the reference in question was made. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent. The Hon'ble Supreme Court has further observed that whenever a workman raises some dispute it does not become industrial dispute and appropriate government cannot in a mechanical fashion make the reference of the alleged dispute terming as industrial dispute. Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 10 of the Act and there being no industrial dispute existing or even apprehended.

5.Mr. Dabhi further relied upon the decision of the

Hon'ble Supreme Court in case of **Assistant Executive Engineer, karnataka V/s. Shivalinga** reported in (2002)10 Supreme Court cases 167 wherein the Hon'ble Supreme Court has held that in cases where there is a serious dispute, or doubt as to the employer-employee relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim stale. That is exactly the situation arising in the present case.

6. Mr. Dabhi has, therefore, submitted that the award passed by the Labour Court is absolutely unjust and the same is required to be quashed and set aside.

7. Mr. Shashikant S. Gade, learned advocate appearing for the respondents has submitted that the petitioners have not led any evidence before the Labour Court nor they have filed their statement of defence. Even the witnesses could not remain present. The advocate engaged by the petitioners has also not remained present before the Court. The facts stated by the

respondent-workman in their statement of claim have not been disputed nor they have been controverted by leading any evidence so far. It is, therefore, submitted that the award passed by the Labour Court is just and proper and the same should not be required to be disturbed by this Court while exercising its power under Article 226 and 227 of the Constitution of India. He has further submitted that the delay is not the ground for disturbing the order passed by the Labour Court as the reference was made to the Labour Court in 1985. He has therefore submitted that the Labour Court has accepted the plea raised by the workmen. The respondent workman in absence of documents or evidence on record have been awarded reinstatement with full back wages as far as Divanji Ravaji Thakor and Fulaji Ravaji Thakor are concerned and 25% of back wages were awarded to Fulaji Ravaji Thakore as a legal heir of Ravaji Talaji Thakore who has expired during the pendency of the reference.

8. Mr. Gade further submitted that even the petitioner has not challenged the award passed by the Labour Court immediately as the award was passed on 2.2.1998 and the present petition was filed on 28.12.1999. Thereafter Recovery Application No.40 of 1999 was filed by the

respondent before the Presiding Officer, Labour Court, Kalol. He has, therefore, submitted that this Court should not interfere in the award passed by the Labour Court.

9. After having heard the learned A.G.P. appearing for the petitioner and learned advocate Mr. Shashikant S. Gade appearing for the respondents and after having gone through the award passed by the Labour Court and the facts stated and averments made in the present petition which have not been controverted by filing any affidavit-in-reply on behalf of the respondent-workman, the Court is of the view that the Labour Court has committed very serious error in awarding reinstatement with full back wages to Shri Divanji Ravaji Thakore and Shri Fulaji Ravaji Thakore. It appears to the Court that the respondent workmen have not produced any documents before the Court or have not produced any evidence before the Court for the averments made in the application. It is true that the petitioners have also not led any evidence before the Labour Court. Therefore, the claim of the respondent-workman should have been entertained on merits. The averments made in this petition have not been controverted. There is no denial of the fact that Criminal case was filed.

Respondent workmen were put in jail. Thereafter, on acquittal, they have made a reference before the Labour Court. The averments are made to the effect that the petitioners have offered alternative job which have not been availed of by them. The respondents were daily wagers. The were not on regular establishments. Their selection on the post was not in accordance with rules and regulations. Even otherwise, on the basis of “no work no pay”, they are not entitled to claim back wages. The Labour Court has completely over-looked all these aspects. In this view of the matter, there is no question of granting back-wages to the respondents.

10.In the aforesaid circumstances, the Court is of the view that since the respondent Nos.1 and 3 expired, there is no question of their reinstatement. The question of reinstatement would arise only in the case of the respondent No.2. The question of reinstatement would not arise when there is serious doubt about the integrity of the persons. Here in this case, the allegation of theft was made against them. It is true that the respondent workmen have been acquitted in the criminal proceedings. Further, while passing the acquittal order, the Court has observed that the eye-witness was turned hostile and they were acquitted on

the ground of lack of evidence. The standard of proof in criminal proceedings as well as in civil proceedings are totally different. If the petitioners' contentions that there are serious charges of theft against the respondents, are accepted, in that case, there is no question of reinstatement of even respondent No.2. The award passed by the Labour Court is, therefore, required to be interfered with.

11.Since the Court is quashing and setting aside the award passed by the Labour Court, there is no question of granting back wages or reinstatement. However, the petition was admitted and stay against execution of award was granted subject to compliance with the provisions of Section 17B of the I.D. Act, and since two respondents have already expired, by way of compensation and purely on sympathetic ground, the Court directs the petitioner to pay 25% of their last drawn salary or wages from the date of their alleged termination till the date of death of the respondent Nos.1 and 3 and till the date of this order to respondent No.2, within one month from the date of receipt of writ from this Court or from the date of receipt of certified copy whichever is earlier. While calculating this amount, payment, if any, made under

Section 17B of the Act should be deducted.

12.With the aforesaid directions and observations, this petition is accordingly disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.A.PUJ,J.)

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